

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

75-1049 *B 7cc*
Page 5

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 75-1049

UNITED STATES OF AMERICA, Appellee,

V.

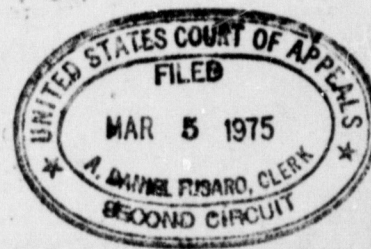
ROBERT WAYNE GRANT, Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

APPENDIX FOR THE APPELLANT

Charles N. Sturtevant
Federal Public Defender
450 Main Street
Hartford, Connecticut

Attorney for Appellant



PAGINATION AS IN ORIGINAL COPY

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H 35

~~FMET CLARK~~

9/24/74

Sec. 2113(a)

Continued

DATE
1971

PROCEEDINGS

1/18 Endorsement entered on Motion For Bill of Particulars, "Counsel have agreed to accept the government's offers of compliance and the government is allowed three (3) weeks within which to comply. (Blumenfeld, J.) 1/18/71." m-1/20/71

Endorsement entered on Motion For Discovery and Production, "Counsel have agreed to accept the government's offers of compliance and the government is allowed three (3) weeks within which to comply. 1/18/71 (Blumenfeld, J.)." m-1/20/71

Endorsement entered on Motion For The Production of Evidence Favorable To The Accused, "Counsel have agreed to accept the government's offers of compliance and the government is allowed three (3) weeks within which to comply. 1/18/71 (Blumenfeld, J.)." m-1/20/71

Copies of the above endorsements handed U. S. Atty and mailed to Atty. Gussak.

1/18 3 Motions on calendar - OFF, Government to supply information within 3 weeks. (Blumenfeld, J.) m-1/19/71

2/4 Government's Compliance With Defendant's Motions For Bill of Particulars, For Discovery and Production, and For Production of Evidence Favorable to the Accused, Filed.

5/3 Call of Calendar - Ready and passed. (Murphy, J.) m-5/4/71

5/27 Court Reporter's notes of proceedings held on Jan. 4, 1971, filed at Hartford. (Collard, R.) - Plea

7/2 Court Reporter's sound recording of proceedings held on January 4, 1971, filed in Hartford. (Collard, R.) - Plea

9/28 JURY TRIAL - 36 Jurors responded to roll call and were sworn on Voir Dire and interrogated by the Court. 12 Jurors and 1 alternate impanelled and sworn - Case will be tried next Tuesday, Oct. 5th. Jury excused until then. (Clarie, J.) m-9/29/71

10/12 Memorandum of Law, filed by Asst. US Atty. Roeder.

10/13 JURY TRIAL COMMENCES:- 13 Jurors report - Motion of Atty Gussak for sequestration of witnesses - no objection by the Govt. - Motion Granted - 5 Government Witnesses sworn and testified - Govt. Exhibits 1, 2, 3 & 5 filed - Government Exhibits 4A thru 4N marked for identification - Court exhibit A,B,C,D,E,F,G,H & I filed. Court adjourned at 3:28pm until tomorrow at 10:00 am. (Clarie, J.) m-10/13/71

10/14 JURY TRIAL CONTINUES: Substitutions made on Exhibits 4L & 4M with altered pictures - 13 jurors report - One Government witness previously sworn, recalled and testified - ~~3/GOVERNMENT WITNESSES SWORN AND TESTIFIED~~ 4 Government's witnesses sworn and testified - Govt. exhibits 4L, 4M and 8 marked as full exhibits - Govt. exhibits 6A thru 6H filed - Court exhibits J,K,L,M filed - Govt. rests at 12:37pm - Defense moves for Acquittal - Motion Denied - 3 Defense witnesses sworn and testified - Defendant rests - Government's witness sworn and testified on rebuttal - Court exhibit N filed - ~~3/DEFENDANT'S WITNESSES SWORN AND TESTIFIED~~ - Government rests at 3:16 pm - Requests to charge filed by Atty. Gussak for the Defendant - Court adjourned at 3:22 pm until 10:00 am on Friday. (Clarie, J.) m-10/15/71

10/15 JURY TRIAL CONTINUES: 13 jurors report - Summations from 10:02 am to 10:56 am - Govt.'s rebuttal at 10:57am - Judge charges at 11:23 am - alternate juror dismissed and jury retires at 11:42 am - Govt. has no exceptions to charge - Defendant's Attorney takes exception to charge, withdrawn - Indictment and exhibits given to jury at 11:46 am and returned at 12:32 pm with a verdict of GUILTY - Jury polled at request of Atty. Gussak - all render guilty verdict - Verdict ordered entered by the Court. Bond of \$25,000.00 with full surety - Court adjourned at 12:40am. (Clarie, J.) m-10/18/71

CONTINUED

2

DATE	PROCEEDINGS
1971	
10/19	Motion For Acquittal Notwithstanding The Verdict and Motion For New Trial, filed.
10/8	Court Reporter's notes of proceedings held on September 28, 1971, filed in Hartford. (Sperber, R.)-Jury Selection
10/20	Marshal's return showing service, filed. (4 Subpoenas to testify and 1 Subpoena to produce document or object.)
10/26	Application To Appeal in forma Pauperis, filed.
10/26	Marshal's executed return, filed. (Temp. Commitment)
11/1	To TEC. (Blumenfeld, J.)m-11/2/71
11/1	Motion For New Trial Withdrawn - Motion For Acquittal, Denied. (Clarie, J.)m-11/2/71
11/2	Endorsement entered on Motion For Acquittal Notwithstanding The Verdict and Motion for New Trial, "Motion For acquittal N.O.V. is denied. Motion For new trial is withdrawn. So ordered. (Clarie, J.)m-11/4/71
	Copy mailed to Atty. Gussak and copy handed Asst. US Atty. in Hartford.
11/2	Order For Return of Bond, filed. (Zambano, J.)m-11/3/71
12/6	DISPOSITION: (1 Count) 15 yrs. imprisonment.
	Motion To Proceed in forma pauperis granted to the extent that the Notice of Appeal may be filed without fee. Motion to Reduce bond pending Appeal heard - Denied - \$25,000 with full surety. (Clarie, J.)m-12/7/71
	Affidavit of defendant, filed.
12/7	Endorsement entered on Application To appeal in Forma Pauperis. "Dec. 6, 1971 Application to proceed in forma pauperis is granted. So ordered." (Clarie, J.)m-12/8/71
12/6	Notice of Appeal, filed. Copies mailed to Atty Gussak and the defendant, Robert W. Grant. Copy handed Asst. US Atty Roeder and certified copy of Notice of Appeal along with certified copy of docket entries mailed to USCA.
12/7	Copy of endorsement on Application To Appeal in Forma Pauperis mailed to Atty. Gussak and one Handed Asst. US Atty. Roeder.
12/7	Judgment and Commitment, filed. (Clarie, J.)m-12/8/71 Two copies handed U.S. Marshal at Hartford.
2/6	CJA 21 executed (Clarie, J.) approving services of Elliott Sperber, Court Reporter for transcript by Betty Jane Mahoney.
12/28	Court Reporter's notes of proceedings held on October 14, 1971, filed in Hartford. (Mahoney, R.)-Trial
1972	
1/7	Court Reporter's sound recording of proceedings held on December 6, 1971, filed in Hartford. (Sperber, R.)-Disposition
1/11	Marshal executed return, filed. - Judgment & Commitment
1/14	Record on Appeal mailed U.S. Ct. of Appeals. Copies of docket entries and Index mailed Attys. Jones and Gussak.
1/11	Court Reporter's notes of proceedings held on October 15, 1971, filed in Hartford. (Sperber, R.)-Jury Trial
1/20	Acknowledgement received from USCA for record mailed 1/14/72.
2/10	Motion For Review of Pre-Trial Release Under Title 18, Sec. 3146 - 3150, Conditions A. Through E. Post Conviction Pending Appeal, filed pro se.
	Copy mailed to Atty. Gussak.
1/18	Court Reporter's Transcript (Vol. II) of proceedings held on October 14, 1971, filed in Hartford. (Mahoney, R.)-Trial
2/16	Court Reporter's Transcript (Vol. I) of proceedings held on October 13, 1971, filed in Hartford. (Mahoney, R.)-Trial
2/22	Defendant's Motion For Review etc., Over to Mar. 6th. (Clarie, J.)m-2/23/72

CONTINUED

PROCEEDINGS

22 Government's Response to Defendant's Motion For Review of
Pre-Trial Release, filed along with Affidavit of James R. Millen.

23 CJA Form 21, approved for \$275.00 (Betty Jane Mahoney, R) and
original mailed to A.O. for payment. (Clarie, J.)

18 Court Reporter's notes of proceedings held on October 13, 1971,
filed in Hartford. (Mahoney, R.)

29 Supplement to Record on Appeal sent U.S. Court of Appeals.
Copies of Index mailed Attys. Jones and Gussak

6 Defendant's Motion for Review of Pre-Trial Release etc.,
Denied. (Clarie, J.) m-3/7/72

6 Receipt of documents mailed on 2/29/72, to USCA, filed.

6 Endorsement entered on Motion For Review of Pre-Trial Release
Under Title 18, Sec. 3146-3150 Conditions A. Through E. Post Conviction
Pending Appeal, "3/6/72 Motion Denied." (Clarie, J.) m- 3/8/72

14 Court Reporter's notes of proceedings held on March 6, 1972,
filed in Hartford. (Snerber, R.)-Motion

13 Court Reporter's notes of proceedings held on November 1, 1971,
filed in Hartford. (Sperber, R.)-Motion

29 Ruling On Petitioner's Motion For Reduction of Post-Conviction
Bond, filed. (Clarie, J.) m- 3/30/72 Copies Mailed to Atty. Gussak and
the Defendant and copy handed Asst. US Atty. Roeder in Hartford.

5/3 Stipulation, filed -- "that Clerk, Dist. of Conn. release trial
exhibits to Randolph C. Roeder, Asst. US Atty, in order for said exhi-
bits be taken to Second Circuit Court of Appeals in NYC for hearing on
appeal on 5/4/72".

Certified copy of Stipulation handed Asst. US Atty. Roeder along
with exhibits to be hand carried to USCA in New York. Index handed
Asst. U. S. Atty in Hartford and copy mailed to Atty. Gussak.

5 Exhibits returned to Clerk's Office, Hartford on 5/5/72 by
Asst. U. S. Atty. Randolph C. Roeder.

19 A True Copy of the Judgment dated May 4, 1972, from the United
States Court of Appeals, filed. (Kaufman, Anderson, Mansfield, Js.)
Ordered, adjudged and decreed that the judgment of said District Court
be and it hereby is affirmed.

6/24 Receipt for Government Exhibit #7 (\$3000.00 cash) signed by
Asst. US Atty. R. C. Roeder, filed.

8/24 Record on Appeal returned by USCA, along with Supplement to Record
on Appeal.

973

722 Defendant's Supporting Memorandum of Law, filed.

4/30 Defendant's Motion To Reduce Sentence, filed, along with Deft's
Affidavit.

974

6/14 Motion For Bail, filed.

6/17 Bond Hearing -- Bond of \$5,000.00 with full surety set by
Court. (Clarie, J.) m-6/18/74

6/18 Appl. for Writ of Habeas Corpus and Testificandum and Order (Clarie,
J.) m-6/20/74 Two attested copies of Order and two copies of Writ
handed US Marshal for service.

CONTINUED ON PAGE 3

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DATE	PROCEEDINGS
1974	
7/3	Surety Bond in the amount of \$5,000.00, filed. Surety is Resolute Ins. Co. by Charles C. Sticka.
7/24	Copy of Mandate from USCA dated June 10, 1974, filed. (Waterman, Friendly & Mulligan, Js.) ".....ordered, adjudged, and decreed that the order of said Dist. Court be, and it hereby is reversed and that the action be and it hereby is remanded to said Dist. Court for further proceedings in accordance with the opinion of this court with costs to be taxed against the appellee." Copies given to US Attorney and U. S. Probation Officer.
8/28	Notice of Readiness Filed by U. S. Government.
9/24	Hearing on Defendant's Motion To Dismiss - Motion Denied. Jury to be selected tomorrow, 9/25/74. Trial date to be set to allow time for deft. to consult with counsel. CJA Form 23, filed. (Financial Affidavit). (Murphy, J.)m-9/25/74
9/24	Endorsement entered and filed on Deft's Motion To Dismiss, "Motion Denied. 9/24/74." (Murphy, J.)m-9/25/74 Copies sent to Attys. Dabrowski and Sturtevant.
9/24	Defendant's Motion To Dismiss and Brief re Motion to Dismiss, filed. (prior to hearing docketed above)
10/3	(Deft's) Motion for Bill of Particulars, filed.
10/4	(Deft's) Motion To Suppress, (Deft's) Motion To Suppress (2 motion and Memorandum in Support of Motion To Suppress The Full-length Photograph of Robert Wayne Grant, filed.
10/4	Government's Opposition To Defendant's Motion For Bill of Particulars, filed.
10/10	Stipulation re Govt. Exh #8 known as Plaintiff's Exh. "W" in Civil No. 15,083, filed re delivery of same to Judge Murphy on 10/11/74 with receipt of Albert S. Dabrowski thereon, filed.
10/11	Hearing Held on Motions - Deft. moves for continuance for medical reasons. Letter (note) from Deft's. Doctor read. Court directs that a Psychiatrist be appointed by the Court to examine the defendant, today in chambers privately....Court reads oral statement of Dr. Manes and Dr. Alexander - Statement filed. Motion for continuance denied. Defendant and counsel confer - Counsel reports that defendant requests continuance and wishes to leave against counsel's advice. Hearing held on Deft. Motion For Bill of Particulars - Deft. leaves courtroom - Motion denied. Hearing held on Deft. Motion To Suppress photograph - Photograph, in sealed envelope, received from Clerk's Office by Atty. Dabrowski handed to Court unopened. Hearing held in abeyance. Hearing held on Deft. Motion to Suppress Statement, 5 Deft's. witnesses, sworn and testified - Govt. Exh. A and B marked for Ident. then admitted as full exhibits. - Defense rests at 1:50pm - Deft. Motion To Suppress Statement, Denied- Deft. Motion To Suppress Photograph, Deferred; referred to Trial Court for its determination under Rule 12. Photograph in sealed envelope returned to Atty. Dabrowski for return to Clerk's Office. Court adjourned at 1:58pm. (Murphy, J.)m-10/15/74
10/11	Govt. Exh. #8 (Civ. Exh. Pltf. "W") returned by Atty. Dabrowski to Clerk's Office, Hartford.
10/22	Motion To Dismiss, filed by the Deft. //u
10/23	Call of Jury Trial List - Trial on 11/19/74- Waiver of Right To Prompt Disposition of Criminal Case filed by the Defendant. (Blumenfeld, J.)m-10/24/74
11/4	Hearing on Motion to Dismiss - Findings of fact to be filed by parties re time elements. (Blumenfeld, J.)m-11/6/74.

CONTINUED

DATE	PROCEEDINGS
1974	
11/15	Stipulation, filed.
11/15	Memorandum of Decision on Defendant's Motion To Dismiss, filed. (Blumenfeld, J.) m-11/18/74 The defendant's motion is denied. SO ORDERED. Copies handed Attys. Dabrowski and Sturtevant.
11/19	Jury Trial cal. - Off - change of plea to substituted Information on 11/16/74 (Blumenfeld, J.) m-11/20/74
1975	
1/6	ORDER FOR DISMISSAL OF THE INDICTMENT, filed. (Blumenfeld, J.) m-1/8
1/13	Notice of Appeal, filed. Copies sent to counsel of record.
1/13	Certified copy of Notice of Appeal and Docket Entries sent to USCA.
1/24	Court Reporter's Notes of Proceedings held on November 4, 1974, filed in Hartford. (Collard, R.)
2/6/75	Receipt from U. S. Court of Appeals for documents
2/4/75	Record on Appeal mailed to U.S.C.A. copy to Attys. Dorsey & Sturtevant
2/13	Acknowledgement from USCA for Record on Appeal, Filed.
2/21	Copy of Schedule of Hearing from USCA, filed.

M. JOSEPH BLUMENFELD

H74 / 181

[illegible]

DATE	PROCEEDINGS
1974	
11/16	Waiver of Indictment executed and filed along with Information charging violation of 18 USC 2113(c) in one count - receive and possess moneys stolen from a bank, the deposits of which were insured by the F.D.I.C. PLEA of guilty entered to one count Information. U. S. to dismiss Crim. No. H-35 at time of disposition of this case. (Blumenfeld, J.) m-11/18/74
1975	
1975	
1/3	Court Reporter's Sound Recording of Proceedings held on November 16, 1974, filed in Hartford. (Collard, R.)
1/6	DISPOSITION: imposition of sentence suspended, defendant is placed on probation for a period of five years. A condition of probation is that the defendant makes a good effort to make restitution out of his own earnings. Upon completion of restitution an application to reduce period of probation may be filed. (BLUMENFELD, J.) m-1/8/75
	CONTINUED

DATE	PROCEEDINGS
1975	
1/8	Judgment and Order of Probation, filed. (Blumenfeld, J.) m-1/9/74 Two attested copies handed US Probation Officer in Hartford.
1/24	Court Reporter's Notes of Proceedings held on November 16, 1974, filed in Hartford. (Collard, R.)
1/24	Court Reporter's Notes of Proceedings held on January 6, 1975, filed in Hartford. (Collard, R.)

COPY OF ORIGINAL

Filed 1-13 1975

United States District Court
District of Connecticut

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

ROBERT WAYNE GRANT

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CRIMINAL NO. H-35

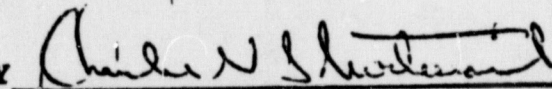
NOTICE OF APPEAL

Notice is hereby given that Robert Wayne Grant, Defendant above-named, hereby appeals to the United States District Court of Appeals for the Second Circuit from the denial of two motions to dismiss entered on September 24, 1974 and November 15, 1974, having plead guilty and reserved his right to appeal these rulings.

Dated at Hartford, Connecticut this 13th day of January, 1975.

THE DEFENDANT
ROBERT WAYNE GRANT

BY



Charles N. Sturtevant
Federal Public Defender
450 Main Street
Hartford, Connecticut

UNITED STATES OF AMERICA

V.

ROBERT WAYNE GRANT

:
:
:
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:

CRIMINAL NO. H-35

MOTION TO DISMISS

Defendant moves, pursuant to Plan for the United States District Court For Achieving Prompt Disposition of Criminal Cases Plan, that the above-entitled matter be dismissed for failure to comply with the provisions of said plan. The defendant respectfully represents, as grounds, the following:

1. On the previous trial of the above-matter defendant was found guilty by a jury on October 15, 1971.
2. An appeal was duly taken on behalf of the defendant and the judgment of conviction was affirmed.
3. On June 6, 1972 Grant petitioned for a new trial pursuant to 28 U.S.C. §2255 to the District Court for the District of Connecticut. Judge Clarie denied this petition on October 2, 1973.
4. An appeal of Judge Clarie's decision was duly taken and on June 10, 1974 the Second Circuit vacated the judgment or conviction and ordered a new trial.
5. The defendant has not been brought to trial since that date.
6. The Plan, in part pertinent to re-trials, states as follows:

"6. Retrials

Where a new trial has been ordered by the district court or a trial or new trial has been ordered by an appellate court, it shall commence at the earliest practicable time, but in any event not later than 90 days after the finality of such order unless excluded for good cause."

7. Upon information and belief, no application for an extension upon a showing for good cause has been filed by the government.

Wherefore, defendant, not having his trial commenced within 90 days of the judgment entered by the Second Circuit Court of Appeals, moves for dismissal.

Dated at Hartford, Connecticut this 24th day of September, 1974.

THE DEFENDANT
ROBERT WAYNE GRANT

BY Charles N. Sturtevant
Charles N. Sturtevant
Federal Public Defender
450 Main Street
Hartford, Connecticut

CERTIFICATION

This is to certify that a copy of the above Motion to Dismiss was delivered to Albert Dabrowski, Esq., Assistant United States Attorney, Hartford, Connecticut.

Charles N. Sturtevant
Charles N. Sturtevant

10:25 a.m.
7/24/74
asn

11

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :
 :
 V. : CRIMINAL NO. H-35
 :
 ROBERT WAYNE GRANT :

BRIEF RE MOTION TO DISMISS

Defendant has moved, pursuant to Plan for the United States District Court for Achieving Prompt Disposition of Criminal Cases ("Plan"), that the above matter be dismissed for failure to comply with the provisions of said plan.

I

THE FACTS

The defendant was previously tried by a jury which, on October 15, 1971, returned a verdict of guilty on one count for bank robbery. An appeal was duly taken on behalf of defendant and the judgment of conviction was affirmed. On June 6, 1972, Grant petitioned the United States District Court for the District of Connecticut to vacate his conviction and order a new trial pursuant to 28 U.S.C. §2255. Hubert J. Santos of the Federal Public Defender's Office was appointed to represent the Petitioner Grant. Judge Clarie denied the Petitioner's motion to vacate and motion for a new trial on October 2, 1974. An appeal was duly taken and on June 10, 1974 the United States Court of Appeals for the Second Circuit vacated the judgment of conviction and ordered a new trial. The Second Circuit mandate was dated July 19, 1974. Neither the Government or the defendant, pursuant to Rule 41, Fed. R. App. P. moved for an order to enlarge the time within which the mandate must

11-A

issue. Since June 10, 1974 defendant has not been brought to trial. Nor has the Defendant been notified with any application by the government for an extension within the terms of the Plan. The defendant has never applied for a postponement or continuance of the re-trial.

II

The Plan, in part pertinent here, states as follows:

"6. Retrials

Where a new trial has been ordered by the district court or a trial or new trial has been ordered by an appellate court, it shall commence at the earliest practicable time, but in any event not later than 90 days after the finality of such order unless excluded for good cause."

Defendant is not aware of any decisions concerning Rule 6 of the plan to guide the court in implementing this provision since the past decision of this court and circuit have focused on the meaning of Rule 4 in conjunction with Rule 5 concerning "readiness" for the initial trial.

As a starting point, it is important to recall

"...that the primary purpose of the Prompt Disposition Rules was to vindicate the strong public interest in the prompt resolution of criminal prosecutions."

United States v. Lasker, 481 F.2d 229, 233
(2d Cir. 1973)

"The government's fundamental duty to the public under the Plan is to expedite prosecution, and that duty is not served by the government's contribution to or passive acceptance of unwarranted delay which may well erode public confidence in our institutions of criminal justice."

United States v. Troglen (D. Conn. 1973,
Memorandum Decision, Docket No. H-317)

Rule 6, interestingly enough, does not incorporate the exclusion periods of paragraph 5 to forestall defendant's claim. Rule 6 also requires the commencement of the trial

within 90 days rather than a mere notice of readiness by the government.

The position of the government will undoubtedly center around the phrase "90 days after the finality of such order" and it will argue that "finality" commences when the mandate of the Court of Appeals is returned to the District Court of Appeals.

Certainly, "finality" for the purpose of a petition for a writ of certiorari to the Supreme Court commences with the entry of judgment by the Court of Appeals. Under the "judgment" theory defendant has not had his re-trial commence within the 90 days. The mandate, under Rule 41, Fed. R. App. P., must issue within 21 days of judgment which would start the 90 days commencing July 1, 1974. The government cannot realistically rely on the mandate theory. In this case the mandate was issued by the Second Circuit on July 19, 1974, in obvious violation of Rule 41. It would appear that substantive rights of defendant and public policy should not be affected by clerical errors and failure of courts to abide by federal rules of appellate procedure. More importantly, there has been no reason advanced as to why the government could not commence the re-trial within 90 days of judgment. The Defendant has been available as he was incarcerated for a short period after the decision and soon after he made bond and is presently living in East Hartford, Connecticut.

In view of the lack of applications for extension showing good cause the conclusion is inescapable that the government simply forgot, or for reasons known only to the government, failed to have this case commence within the time allowed.

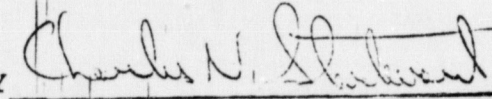
11-C

Wherefore, defendant respectfully requests that his motion for dismissal be granted.

Dated at Hartford, Connecticut this 24th day of September, 1974.

THE DEFENDANT
ROBERT WAYNE GRANT

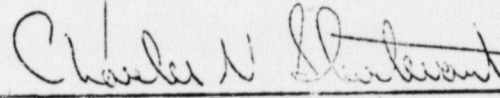
BY



Charles N. Sturtevant
Federal Public Defender
450 Main Street
Hartford, Connecticut

CERTIFICATION

This is to certify that a copy of the above Brief was delivered to Albert Dabrowski, Esq., Assistant United States Attorney, Hartford, Connecticut.



Charles N. Sturtevant

UNITED STATES OF AMERICA

V.

ROBERT WAYNE GRANT

CRIMINAL NO. H-35

MOTION TO DISMISS

Defendant moves, pursuant to the Plan for the United States District Court For Achieving Prompt Disposition of Criminal Cases Plan, that the above-entitled matter be dismissed for failure to comply with the provisions of said plan. The defendant respectfully represents, as grounds, the following:

1. On a previous trial of the above-matter defendant was found guilty by a jury on October 15, 1971.
2. An appeal was duly taken on behalf of the defendant and the judgment of conviction was affirmed.
3. On June 6, 1972 Grant petitioned for a new trial pursuant to 28 U.S.C. §2255 to the District Court for the District of Connecticut. Judge Clarie denied this petition on October 2, 1973.
4. An appeal of Judge Clarie's decision was duly taken and on June 10, 1974 the Second Circuit vacated the judgment of conviction and ordered a new trial.
5. The Second Circuit Mandate was dated ~~June 10~~ ^{July 11}, 1974.
6. The defendant has not been brought to trial since that date.
7. The Defendant filed a Motion to Suppress on October 4, 1974. This motion was denied by Judge Thomas Murphy on Friday, October 11, 1974 immediately after the hearing.
8. Other than the one day required for the hearing mentioned in paragraph number 7 no delays have been caused by the defendant.
9. On September 24, 1974 the defendant filed a Motion to Dismiss on the grounds that the Government had to retry the defendant

within 90 days of the Court of Appeals decision. This motion was also denied by Judge Murphy.

10. The Plan, in part pertinent to re-trials, states as follows:

"6. Retrials

Where a new trial has been ordered by the district court or a trial or new trial has been ordered by an appellate court, it shall commence at the earliest practicable time, but in any event not later than 90 days after the finality of such order unless excluded for good cause."

11. Upon information and belief, no application for an extension upon a showing for good cause has been filed by the government.

Wherefore, defendant, not having his trial commenced within 90 days of the Mandate entered by the Second Circuit Court of Appeals, moves for dismissal.

Dated at Hartford, Connecticut this 22 day of October, 1974.

THE DEFENDANT
ROBERT WAYNE GRANT

BY

Charles N. Sturtevant
Charles N. Sturtevant
Federal Public Defender
450 Main Street
Hartford, Connecticut

CERTIFICATION

This is to certify that a copy of the above Motion to Dismiss was delivered to Albert Dabrowski, Esq., Assistant United States Attorney, Hartford, Connecticut.

UNITED STATES OF AMERICA

:

v.

:

CRIMINAL NO. H-35

ROBERT WAYNE GRANT

:

MEMORANDUM OF DECISION ON DEFENDANT'S
MOTION TO DISMISS

The defendant is before this Court to be retried on a charge of bank robbery. 18 U.S.C. § 2113(a) (1970). A detailed history of this case is unnecessary for the purposes of this motion. It is sufficient to note that on June 10, 1974 the United States Court of Appeals for the Second Circuit vacated the judgment of conviction that was entered following the defendant's first trial and ordered a new trial. The mandate of the Second Circuit was dated and filed on July 19, 1974.

The defendant moves to dismiss this case for failure to comply with the provisions of Rule 6, District of Connecticut Plan for Achieving Prompt Disposition of Criminal Cases.

Rule 6 provides:

"Retrials.

Where a new trial has been ordered by the district court or a trial or new trial has been ordered by an appellate court, it shall commence at the earliest practicable time, but in any event not later than 90 days after the finality of such order unless extended for good cause."

The instant motion is not presented to this Court on a tabula rasa. On September 24, 1974, the defendant filed a similar motion before Judge Thomas Murphy on whose docket this case was then pending. The basis of that motion was that the 90-day period had begun to run on June 10, 1974, the day on which the Second Circuit's decision was rendered, rather than July 19, 1974, the day on which the Court's mandate was filed. Judge Murphy, in a ruling from the bench, denied the defendant's motion. It is apparent that he considered July 19 to be the date from which the 90-day period was to run.

The instant motion is based on a different theory. Accepting July 19 as the day from which the 90-day period began to run, the defendant now argues that the period had lapsed by October 23, 1974, the day on which this motion was filed.^{1/} The government contends, on the other hand, that any period during which a pre-trial motion filed by the defendant is pending must be excluded for the purposes of computing the 90-day period under Rule 6.

In this case, the defendant filed a Motion for a Bill of Particulars on October 3, 1974, and a Motion to Suppress a photograph and a post-conviction statement of the defendant

^{1/} On October 23, 1974, the defendant requested a continuance of three weeks in order to prepare his case for trial. In making his request, he filed a signed "Waiver of Right to Prompt Disposition of Criminal Case" for the period from October 23, 1974 through November 19, 1974, the day on which his trial is now scheduled to begin.

on October 4, 1974. Those motions remained pending before Judge Murphy for the brief period of seven days. On October 11, 1974, he ruled on the defendant's motions, denying the Motion for a Bill of Particulars and the suppression of the post-conviction statement and reserving decision until trial on the suppression of the photograph. That seven-day period is crucial to this case. If excluded in the computation of time, the requirements of Rule 6 have not been violated. If included, the defendant is entitled to a dismissal.

In support of his argument that the seven days should not be excluded, the defendant points to the explicit terms of Rule 5 of the Plan for Achieving Prompt Disposition of Criminal Cases. That rule defines those periods which are to be excluded in computing the trial readiness periods under rules 3 and 4.^{2/} Among the excluded periods under Rule 5 is that "period during which [pre-trial motions] are sub judice." By its very terms, Rule 5 only covers the computation of time under Rules 3 and 4.^{3/} From this the defendant concludes that

^{2/} Rule 3 establishes a 90-day period within which the government must signify its readiness for trial when a defendant is being held in pre-trial custody. Rule 4 establishes a 6-month trial readiness period when the defendant is not so detained. Neither rule seems to involve the new trial situation covered by Rule 6.

^{3/} The preamble to Rule 5 states:

"In computing the time within which the government should be ready for trial under Rules 3 and 4, the following periods should be excluded"

the 90-day period under Rule 6 cannot be tolled for any reason.

The Court disagrees with the defendant's conclusion. It is perfectly clear that the defendant's interpretation of the rules would frequently lead to unjust results. For example, Rule 5(d) provides that any "delay resulting from the absence or unavailability of the defendant" shall be excluded. If the policy of this provision were held not applicable under Rule 6, a defendant, if released from custody pending retrial, could obtain a dismissal merely by hiding out during the 90-day period. An equally absurd result would be obtained if the policy underlying the provisions of Rule 5(b) were ignored in Rule 6 cases. Rule 5(b), inter alia, excludes those "[p]eriods of delay resulting from a continuance granted by the district court at the request of . . . the defendant"

Similarly, it would be unreasonable not to exclude any periods of delay resulting from the filing of pre-trial motions by the defendant. Otherwise, a defendant could easily engineer the dismissal of charges by filing eleventh hour pre-trial motions requiring perhaps extensive hearings and briefing. The Plan for Achieving Prompt Disposition of Criminal Cases in this district did not intend to place the power of dismissal so easily in the hands of a defendant.

As frequently stated, "the philosophy underlying these Rules seeks to vindicate the public's interest in the swift

and just administration of criminal justice." United States v. Bosques, 364 F. Supp. 131, 134 (D. Conn. 1973) (emphasis in original); United States v. Lasker, 481 F.2d 229, 233 (2d Cir. 1973), cert. denied 42 U.S.L.W. 3523 (March 19, 1974). The defendant has failed to demonstrate any way in which the public's interest would be vindicated by permitting defendants to outmaneuver the Court and the government and obtain a dismissal with such relative ease.

Without having to consider whether all of Rule 5 is applicable to retrials under Rule 6,^{4/} this Court holds that:

^{4/} As noted by this Court in United States v. Bosques, supra, 364 F. Supp. at 132, n.2:

"The Second Circuit Rules Regarding Prompt Disposition of Criminal Cases, hereinafter the Rules, 28 U.S.C.A. App. (Supp. 1973), were promulgated by the Circuit Council of the Second Circuit on January 5, 1971 (effective date July 5, 1971). On February 28, 1973, the judges of the United States District Court for the District of Connecticut, in accordance with Fed.R.Crim.P. 50(b), and at the direction of the Circuit Council, approved and adopted a Plan For Achieving Prompt Disposition of Criminal Cases, hereinafter the Plan, and since April of this year [1973], the Rules have been effectively replaced by the Plan. United States v. Rollins, 475 F.2d 1108, 1109 n.1 (2d Cir. 1973)."

The Plan closely paralleled the Second Circuit's Rules, but made several substantial changes.

One such change involved retrial procedure which had been governed by the Second Circuit's Rule 6:

"6. If the defendant is to be retried following a mistrial, an order for a new trial, or an appeal or collateral attack, the time

any delay resulting from the filing by a defendant of pre-trial motions shall be excluded in computing the 90-day period during which a trial must commence under Rule 6.

The defendant's motion is denied.

SO ORDERED.

Dated at Hartford, Connecticut, this 15th day of November, 1974.

M. Joseph Blumenfeld
M. Joseph Blumenfeld
United States District Judge

4/ cont'd

shall run from the date when the order occasioning the retrial becomes final."

Unlike Rule 6 under the Connecticut Plan, the Second Circuit Rule did not establish a special time period for retrial, rather the provisions of Rule 3 or 4 were to apply, depending upon whether the defendant was held in custody pending retrial. The only purpose of the Second Circuit's Rule 6 was to establish the date from which the time should run. Thus, the provisions of the Second Circuit's Rule 5 which, like Rule 5 under the Connecticut Plan, were applicable to time periods under Rules 3 and 4 also applied to retrials.

The Connecticut Plan made several changes in Rule 6 among which was the explicit provision of a 90-day period during which a retrial was to commence. Thus, reference to the time provisions of Rules 3 and 4 was no longer necessary. However, no change was made in the preamble to Rule 5 to include Rule 6 in its coverage. This was quite likely an oversight in drafting as no possible policy justification could be advanced for not making the reasonable exclusion provisions of Rule 5 applicable to the 90-day period provided for under Rule 6. To be sure, Rule 6 requires the commencement of trial within 90 days as distinguished from the Rule 3 and 4 requirement that the prosecution be merely ready for trial. However, that distinction is addressed to the possibility of delay resulting from court congestion which this district did not consider to be an acceptable justification for delay in the case of retrials. However, that distinction would have no bearing on the wisdom of making the provisions of Rule 5 applicable to retrials.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

ROBERT WAYNE GRANT

:

:

CRIMINAL NO.

H-74-181

I N F O R M A T I O N

The United States Attorney, through the Assistant United States Attorney, charges:

ONE COUNT

On or about September 8, 1970, in the District of Connecticut, ROBERT WAYNE GRANT, the defendant, unlawfully and knowingly did receive and possess about \$4,000 which had been taken and carried away with intent to steal and purloin from the care, custody, control, management and possession of The Glastonbury Bank and Trust Company, East Hartford Branch, the deposits of which were insured by the Federal Deposit Insurance Corporation at the time of such taking and carrying away, and ROBERT WAYNE GRANT knew said money to have been taken and carried away, in violation of Title 18 United States Code, Section 2113(c).

PETER C. DORSEY

United States Attorney

By:

Albert S. Dabrowski

ALBERT S. DABROWSKI

Assistant United States Attorney

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 75-1049

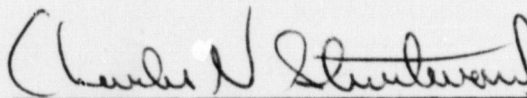
UNITED STATES OF AMERICA,
Appellee,

V.

ROBERT WAYNE GRANT,
Appellant

CERTIFICATION

This is to certify that a copy of the Brief and Appendix in the above matter was delivered to the United States Attorney's Office, 450 Main Street, Hartford, Connecticut on the 5th day of March, 1975.



Charles N. Sturtevant
Federal Public Defender
450 Main Street
Hartford, Connecticut

Attorney for the Appellant

FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at
the United States Courthouse in the City of New York, on the tenth day of
June one thousand nine hundred and seventy-four.

Present:

HON. STERRY R. WATERMAN
HON. HENRY J. FRIENDLY
HON. WILLIAM H. MULLIGAN

Circuit Judges.

H35

175-2536

Robert Wayne Grant,

Plaintiff-Appellant,

v.

Noah L. Alldredge, Warden, U.S.M.E.P.,

Defendant-Appellee.

73-2536

73-2536

Appeal from the United States District Court for the

District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court

for the District of Connecticut, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that

the order of said District Court be and it hereby is

reversed and that the action be and it hereby is remanded to said Dist
Court for further proceedings in accordance with the opinion of this
court with costs to be taxed against the appellee.